

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 22,708

JUL 22 1969

UNITED STATES OF AMERICA,

Appellant,

- v -

STADIUM APARTMENTS, INC., ET AL.

Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADDITIONAL AMICUS CURIAE BRIEF
STATE OF ARIZONA

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§ 12-1282

THE STATEMENT OF POSITION OF
THE STATE OF ARIZONA

The State of Arizona files this additional amicus curiae brief pursuant to a letter from the Clerk of this Court dated June 26, 1969, allowing the filing of an additional brief on the merits until July 20, 1969. In this brief, the State of Arizona will not burden the Court with full legal argument on the merits, as the amicus curiae brief of the State of California has presented an exhaustive review of the law in this matter. Following is a short review of the Arizona statutory and case law providing for redemption following foreclosure of mortgages.

The Arizona Revised Statutes, as amended in 1963, provide in part:

"§ 12-1282. Time for redemption

"A. The judgment debtor or his successors in interest may redeem at any time within thirty days after the date of the sale if the court determined as part of the judgment under which the sale was made that the property was both abandoned and not used primarily for agricultural or grazing purposes.

"B. The judgment debtor or his successor in interest may redeem at any time within six months after the date of the sale except when the court has made the determinations as provided in subsection A. * * *

In Elson Development Co. v. Arizona Savings and Loan Association, 99 Ariz. 217, 407 P.2d 930 (1965) the Arizona Supreme

Court held that an agreement by the mortgagor to abandon the mortgaged premises if the said mortgagor did not perform certain obligations by a set date to be invalid and against public policy. In that opinion, the Arizona Supreme Court stated:

"In the instant case there was an effort to reduce the statutory redemption period by the agreement to abandon. Such agreements would mean that the redemption period would end at a time when the mortgagor might be least able to make redemption. The mortgagee could thereby secure title to the property by bidding less than the amount of the judgment, and less than the real value of the property, thereby defeating the purpose and intent of the provisions of the statutes providing for redemption periods.

"The intent and purpose of the statute providing for redemption cannot be violated by an agreement. The object of the redemption statute is to give to the mortgagor time to pay his obligation and avoid the loss of his property. . . ."

CONCLUSION

The inclusion of the Idaho period of redemption in the foreclosure decree should be affirmed as either a matter of law or as a matter of public policy if this Court is to adopt an applicable rule:

- (1) For the reasons expressed in the amicus curiae brief of the State of California.
- (2) For the reasons stated by the Arizona Supreme Court.
- (3) For the reason that periods of redemption after mortgage foreclosures do not impair the investment security of mortgagees.

Respectfully submitted,

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